

HOUSE BILL 551

By Littleton

AN ACT to amend Tennessee Code Annotated, Title 36;
Title 37 and Title 68, Chapter 3, Part 3, relative to
children.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-1-109(a)(1)(B)(i), is amended by deleting the language "forty-five (45) days after the birth" and substituting instead "sixty (60) days after the birth".

SECTION 2. Tennessee Code Annotated, Section 36-1-109(a)(1)(B)(ii), is amended by deleting the language "counseling" and substituting instead "counseling, which may occur in person or by virtual means,".

SECTION 3. Tennessee Code Annotated, Section 36-1-111(b)(1), is amended by deleting the language "All surrenders must be made in chambers before a judge" and substituting instead "All surrenders must be made before a judge".

SECTION 4. Tennessee Code Annotated, Section 36-1-111(o)(6)(C), is amended by deleting the subdivision and substituting instead:

(C) If the person, the department, or the licensed child-placing agency to whom the child is surrendered or to whom parental consent is given has physical custody or has otherwise complied with subdivision (d)(6), and if there has been full compliance with the other provisions of this section, then the court shall, contemporaneously with the surrender or the filing of an adoption petition, immediately upon written motion by the person or the person's attorney or by the department or the licensed child-placing agency, enter an order giving the person, the licensed child-placing agency, or the department guardianship or partial guardianship of the child.

SECTION 5. Tennessee Code Annotated, Section 36-1-112, is amended by adding the following as a new subsection:

() The court may waive the three-day revocation period if the birth parent is represented by an attorney who is licensed to practice law in this state.

SECTION 6. Tennessee Code Annotated, Section 36-1-113(g)(10), is amended by deleting the subdivision and substituting instead:

(10)

(A) The parent has been convicted of one (1) of the following offenses from which the child was conceived or charged with one (1) of the following offenses from which the child was conceived and entered into a plea agreement under which the parent pled guilty to a lesser included offense:

- (i) Aggravated rape, pursuant to § 39-13-502;
- (ii) Rape, pursuant to § 39-13-503;
- (iii) Rape of a child, pursuant to § 39-13-522;
- (iv) Especially aggravated rape, pursuant to § 39-13-534; or
- (v) Especially aggravated rape of a child, pursuant to § 39-13-535; and

(B) A certified copy of the conviction suffices to prove this ground;

SECTION 7. Tennessee Code Annotated, Section 36-1-113(h)(1), is amended by deleting subdivision (h)(1)(D) and substituting instead the following:

(D) If a juvenile court has made a finding of severe child abuse as defined at § 37-1-102. A petition required by this subdivision (h)(1)(D) must be filed within fourteen (14) days of the finding;

(E) If a child has been in foster care under the responsibility of the department for six (6) months or more and the child's parents have not made reasonable progress toward obtaining custody of the child during the six-month period; or

(F) If two (2) or more of the grounds for termination of parental rights set out in subsection (g) apply to the child's parent;

SECTION 8. Tennessee Code Annotated, Section 36-1-113(k), is amended by deleting the language "six (6) months" and substituting instead "ninety (90) days".

SECTION 9. Tennessee Code Annotated, Section 36-1-115(d), is amended by deleting the second sentence of the subsection and substituting instead:

Nonresidents may also file a petition to adopt a child in this state if they file the petition in the county where a court granted the nonresidents or a licensed child-placing agency partial or complete guardianship or legal custody of the child.

SECTION 10. Tennessee Code Annotated, Section 36-1-117(c)(2), is amended by deleting the subdivision and substituting instead:

(2) The biological father has claimed to the child's biological mother, or to the petitioners or their attorney, or to the department, a licensed child-placing agency, or a licensed clinical social worker who or that is involved in the care, placement, supervision, or study of the child that the biological father believes that the biological father is the father of the child and has paid financial support to or for the benefit of the child or the child's mother, or has made a court filing or appearance consistent with the biological father's claim of paternity; provided, that if the biological father has previously notified the department of the biological father's claim to paternity of the child pursuant to the putative father registry in § 36-2-318(e)(3), then the biological father is subject to all the requirements for waiver of notice provisions of § 36-2-318(f)(2) and to all requirements for filing a paternity petition;

SECTION 11. Tennessee Code Annotated, Section 36-1-117(c)(4), is amended by deleting the language "The biological father is openly living with the child at the time the adoption proceeding is commenced and is holding himself out as the father of the child;" and substituting instead:

The biological father is openly living with the child and is holding himself out as the father of the child or has openly lived with the child and held himself out as the father of the child;

SECTION 12. Tennessee Code Annotated, Section 36-1-119(a), is amended by deleting the language "six (6) months" and substituting instead "three (3) months".

SECTION 13. Tennessee Code Annotated, Section 36-1-119(b), is amended by deleting the language "six-month waiting period" and substituting instead "three-month waiting period".

SECTION 14. Tennessee Code Annotated, Section 36-1-119, is amended by deleting subsection (c) and substituting instead:

(c) If the court has received the final court report concerning the circumstances of the child and the petitioners and is satisfied that the adoption will be in the best interest of the child, then the court may waive the three-month waiting period after the filing of the adoption petition and may enter an order of adoption.

SECTION 15. Tennessee Code Annotated, Section 36-1-122(b)(2), is amended by deleting the subdivision and substituting instead:

(2) In no event, for any reason, shall an adoption be overturned by any court or collaterally attacked by any person or entity after six (6) months from the date of entry of the final order of adoption by a court of competent jurisdiction. This subdivision (b)(2) is intended as a statute of repose.

SECTION 16. Tennessee Code Annotated, Section 37-2-414(b)(2), is amended by adding the following language between the first and second sentences of the subdivision:

The department shall continue to attempt to locate an appropriate kinship foster care placement for the child for at least thirty (30) days following removal from the child's home.

SECTION 17. Tennessee Code Annotated, Section 37-2-414(b)(3), is amended by adding the following new subdivision:

(E) A person may become a kinship foster parent only upon completion of a home study, which shall be performed by the department in the same manner as required for foster parents.

SECTION 18. Tennessee Code Annotated, Section 37-2-414(e), is amended by adding the following subdivision (e)(1) and redesignating the current language as subdivision (e)(2):

(1) The department shall not place a child with, or allow a child to remain in the home of, a kinship foster parent if the kinship foster parent shares a residence with the child's parent who has had parental rights to the child terminated.

SECTION 19. Tennessee Code Annotated, Section 37-2-415(a)(17), is amended by deleting the language "The foster parent or parents shall be permitted to attend such hearings at the discretion of the court;" and substituting instead:

The foster parent or parents are permitted to attend such hearings as a necessary witness and, if the foster parent or parents have had custody of the child for six (6) months or longer or are in the process of adopting the child, to address the court, when appropriate;

SECTION 20. Tennessee Code Annotated, Title 37-2-416, is amended by adding the following new subsection:

(c) A third-party provider who has provided services for the child while the child was in the custody of the department must be permitted to attend such hearings as a necessary witness.

SECTION 21. Tennessee Code Annotated, Section 36-1-109(a)(1)(B), is amended by adding the following new subdivision:

(iv) A prospective birth parent and prospective adoptive parent may voluntarily enter into a written contract, pursuant to § 36-1-150, under which the adoptive parent agrees to pay or reimburse the birth parent for payment of birth-related expenses, as specified in subdivision (a)(1)(B)(i).

SECTION 22. Tennessee Code Annotated, Title 36, Chapter 1, Part 1, is amended by adding the following new section:

36-1-150.

(a) A prospective birth parent and prospective adoptive parent may voluntarily enter into a written contract under which the adoptive parent agrees to pay or reimburse the birth parent for payment of birth-related expenses, as permitted by § 36-1-109(a)(1)(B)(i). Unless expressly designated as a moral agreement only and that the agreement is not intended to be legally enforceable, a written agreement executed in accordance with this section is enforceable pursuant to this section.

(b) A contract for birth-related expenses must be in writing and signed by all parties to the agreement. A verbal agreement or written statement not signed by all parties is not enforceable under this section.

(c) A contract for birth-related expenses must contain the following warnings in at least fourteen (14) point boldface type:

(1) After the entry of an order of adoption, an adoption cannot be set aside due to the failure of an adoptive parent or a biological parent to follow the terms of this contract or a later change to this contract; and

(2) A disagreement between the parties or litigation brought to enforce or modify a birth-related expenses contract does not affect the validity of a finalized adoption and must not serve as a basis for orders affecting the custody of the child.

(d) The court issuing the order of adoption has continuing jurisdiction over enforcement or modification of a contract for birth-related expenses.

(e) A party to a contract for birth-related expenses may file the original contract with the court having jurisdiction over the adoption if the contract provides for court enforcement or if the contract is silent as to the issue of enforcement. A contract filed with the adoption court must be filed in the adoption action, unless an action to enforce the contract is filed. An action to enforce the contract is a new and independent action.

(f) A court shall not set aside an order of adoption, rescind a waiver of interest or surrender, or modify an order terminating parental rights due to the failure of a party to comply with any or all of the original terms of, or subsequent modifications to, a contract for birth-related expenses.

(g) A birth-related expenses contract may be terminated by either party at any time for any reason. The prospective birth parent is not required to reimburse the prospective adoptive parent for any expenses incurred prior to termination of the contract.

SECTION 23. Tennessee Code Annotated, Section 36-1-116(a), is amended by adding the following new subdivision:

(3) The department must accept a home study performed by a licensed child-placing agency or licensed clinical social worker, and shall not require a prospective adoptive parent who has had a valid home study completed by a licensed child-placing agency or licensed clinical social worker to undergo an additional home study by the department in order to adopt a child who is in the custody of the department.

SECTION 24. This act takes effect July 1, 2023, the public welfare requiring it.